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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/723,149 | 11/26/2003 | Jake Rachal | 12871/1 | 9233 |
| 26646 | 7590 | 09/26/2006 | EXAMINER | |
| KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004 | | | PATEL, VINOD D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3742 | |
| DATE MAILED: 09/26/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,149

Applicant(s)

RACHAL, JAKE

Examiner

Vinod D. Patel

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,8 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,8 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED OFFICE ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/26/06 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the heating element being substantially flat when viewed in cross section and heating element being positioned between the surface of the base portion and the tips of the bristles as claimed in the claim1, must be shown or the feature(s) canceled from the claim(s). The examiner maintains that a drawing showing a substantially flat heated surface is essential for a proper understanding of the invention and must be shown, especially since applicant argues that this limitation is point of novelty. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Gress (US4217915).

Gress discloses a hair straightening device as shown in the drawings, comprising a handle (3), a base portion (2) having a proximal end adjacent to the handle, a distal end and a surface (8), a plurality of bristles (1) having a tip, a heating element (12) extending between the proximal end and the distal end of the base portion and is positioned at a lateral edge of the base portion, the heating element (12) being

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substantially flat when viewed in cross-section and having a heated surface (8) (see figure 3), a power source including an electrical cord (5) with plug (6) configured to be plugged into an electrical outlet, the heating element (12) is positioned between the surface of the base portion (2) and tip of the bristles (1).

5. Claims 1-3 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hashimoto (US5064993).

Hashimoto discloses a hair straightening device as shown in the drawings, comprising a handle (2), a base portion (1) having a proximal end adjacent to the handle, a distal end and a surface, a plurality of bristles having a tip, a heating element (3) being substantially flat when viewed in cross-section having a heated surface (See Figures 2A, B, C), a power source (b) (batteries) for heating the heating element, plug (7) connected to battery holder (9) with batteries through a cord (8) can be inserted in the receptacle (6) to supply the power (see column 5, lines 17-21), the heating element (3) is positioned between the surface of the base portion (1) and tips of the bristles. .

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gress (US4217915) or Hashimoto (US5064993) in view of Kwan (US6053180).

Neither Gress or Hashimoto disclose a heating element configured to be heated to a temperature between 150⁰ F and 600⁰ F.

.Kwan discloses hair styling apparatus comprising a hair styling apparatus an discloses (column 1, line 9-16) suitable temperature can be programmed according to different hair textures and hair styles desired, in short it depends on intended use of the device.

It would have been obvious to provide a heating element capable of generating temperature between 150⁰F and 600 ⁰F as taught by Kwan for the device of Gress or Hashimoto to obtain desired temperature for desired hair textures and styles.

Response to Arguments

8. Applicant's arguments filed on have been fully considered but they are not persuasive.

With respect to drawing objection, 37 CFR 1.83(a) requires that drawings must "show every feature of the invention specified in the claims", it also provides that "conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention" should be --but are not required to be --illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation." In the examiners opinion, the recite features of the claim 1, are not clearly disclosed in the drawings, or not clearly described in the specification (as stated below, page 5, "The heating element 20 may have any number of different shapes and configurations."). Therefore, features of claim 1, must be shown or cancelled from the claim.

With respect to claim 1, Gress and Hashimoto discloses claimed invention.

Gress discloses a hair straightening device as shown in the drawings, comprising a heating element (3) being substantially flat when viewed in cross-section having a heated surface which is similar to the applicant's description on page 5 of the specification.

Hashimoto discloses a hair straightening device as shown in the drawings, comprising a heating element (3) being substantially flat when viewed in cross-section having a heated surface the heating element having a heated surface which is similar to the applicant's description on page 5 of the specification.

Applicant's discloses on page 5 of the specification "***The heating element 20 may have any number of different shapes and configurations. For instance, in one embodiment, the hair straightening device 10 has a heating element 20 that is substantially oblong, e.g., elongated, when viewed from above and that is substantially flat when viewed in cross-section. Figure 2, on the other hand, is a front view of a hair straightening device 100, in which the heating element 20, when viewed in cross-section, has one lateral edge that is substantially squared, and a second lateral edge that is curved or rounded. It should be recognized that the front, rear and lateral edges of the heating element 20 may have any conceivable shape. Furthermore, it should be recognized that the heating element 20 may have any conceivable shape when viewed from above (or from any other direction).***" Based on this heating element may have different shape and configurations and it is not critical to have particular shape. Specification does not

disclose unexpected results due to particular shape, absent a showing of new or unobvious results.

9. This is a RCE of applicant's earlier Application No. 10/723,149. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod D. Patel whose telephone number is 703-308-5227. The examiner can normally be reached on 7.30 A.M. TO 4.00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VP

Vinod Patel 9/14/06
Vinod Patel
Patent Examiner
Art Unit 3742

Robin D. Evans
ROBIN EVANS
SUPERVISORY PATENT EXAMINER
9/18/06